

Zhao (Migration) [2023] AATA 2696 (25 July 2023)

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DECISION RECORD

DIVISION: Migration & Refugee Division

APPLICANT: Mr Dianjie Zhao

REPRESENTATIVE: Ms Yan Rong Ye (MARN: 0849074)

CASE NUMBER: 2118808

HOME AFFAIRS REFERENCE(S): BCC2021/463537

MEMBER: Peter Emmerton

DATE: 25 July 2023

PLACE OF DECISION: Adelaide

DECISION: The Tribunal remits the application for an Employer Nomination (Permanent) visa for reconsideration, with the direction that the applicant meets the following criteria for a Subclass 186 - Employer Nomination Scheme visa:

- Public Interest Criterion 4020 for the purposes of cl 186.213(1) of Schedule 2 to the Regulations and subsequently cl 186.213 of Schedule 2 to the Regulations

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Statement made on 25 July 2023 at 1:18pm

CATCHWORDS

MIGRATION – Employer Nomination (Permanent) (Class EN) Visa – Subclass 186 – a bogus document or false or misleading information – work reference may be false or misleading in relation the applicant’s skills – applicant was fully qualified and experienced – not sufficient evidence to conclude that the applicant has given, or caused to be given a bogus document, or information that is false or misleading – PIC 4020(2B) is met – decision under review remitted

LEGISLATION

Migration Act 1958, ss 65, 375

Migration Regulations 1994, Schedule 2, cl 186.213, Schedule 4, Public Interest Criterion ('PIC') 4020

CASES

Arora v MIBP [2016] FCAFC 35

Batra v MIAC [2013] FCA 274

Trivedi v MIBP [2014] FCAFC 42

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

4. This is an application for review of a decision made by a delegate of the Minister for Home Affairs on 23 November 2021 to refuse to grant the applicant a Employer Nomination (Permanent) visa under s 65 of the *Migration Act 1958* (Cth) (the Act).
5. The applicant applied for the visa on 28 March 2021. The delegate refused to grant the visa on the basis that the applicant did not satisfy the requirements of cl 186.213(1) of Schedule 2 to the *Migration Regulations 1994* (Cth) (the Regulations) because they believed that the visa applicant had provided or caused to be provided, a bogus document or false or misleading information in relation to this visa application. Therefore PIC 4020 is not satisfied and subsequently the requirements of 186.213(1) can-not be satisfied.
6. The applicant appeared before the Tribunal, via video, on 25 July 2023 to give evidence and present arguments. The Tribunal also took evidence from Ms Robyn Perrin, a friend and community volunteer organiser.
7. The Hearing was conducted with the assistance of an interpreter fluent in the English and Mandarin languages.
8. The applicant was represented in relation to the review.
9. The Tribunal notes there is a Non-disclosure Certificate, (NDC) issued under s.375A. The Tribunal does not consider it relevant in its deliberations in this case and has not considered the information contained within the certificate when considering this case nor disclosed the information covered by the Certificate. The applicant and their representative were asked to comment or respond which was declined.
10. For the following reasons, the Tribunal has concluded that the matter should be remitted for reconsideration.

CONSIDERATION OF CLAIMS AND EVIDENCE

11. The issue in this review is whether the visa applicant meets Public Interest Criterion 4020 (PIC 4020) as required by cl 186.213(1) for the grant of the visa. Broadly speaking, this requires that:
 - there is no evidence that the applicant has given, or caused to be given, to the Minister, an officer, the Tribunal, a relevant assessing authority, or Medical Officer of the Commonwealth, a bogus document or information that is false or misleading in a material particular in relation to the application for the visa or a visa that the applicant held in the 12 months before the application was made: PIC 4020(1); and
 - the applicant and each member of the family unit has not been refused a visa because of a failure to satisfy PIC 4020(1) during the period starting 3 years before the application was made and ending when the visa is granted or refused, unless the applicant was under 18 at the time the application for the refused visa was made: PIC 4020(2) and (2AA); and
 - the applicant satisfies the Minister as to his or her identity: PIC 4020(2A); and

- neither the applicant nor any family unit member has been refused a visa because of a failure to satisfy PIC 4020(2A) during the period starting 10 years before the application was made and ending when the visa is granted or refused, unless the applicant was under 18 at the time the application for the refused visa was made: PIC 4020(2B) and (2BA).
12. The requirements in PIC 4020(1) and (2) can be waived if there are certain compelling or compassionate reasons justifying the granting of the visa: PIC 4020(4). However, this waiver does not apply to the identity requirements in PIC 4020(2A) and (2B). PIC 4020 is extracted in the attachment to this decision.
13. The Tribunal has read and carefully considered the following evidence presented to the Department prior to the hearing.
- IMMI Acknowledgement of Application Received
 - Covering letter (EMAIL) - RECIPIENT DIANJIE ZHAO
 - Request for Health Examinations
 - Covering letter (EMAIL) - RECIPIENT DIANJIE ZHAO - (Main Applicant)
 - Request for Health Examinations - BCC2021 463537 - 1010643378 - FENG, MAOLING
 - Covering letter (EMAIL) - POINT_OF_CONTACT MAOLING FENG - (Main Applicant)
 - Request for Health Examinations - BCC2021 463537 - 1010643378 - ZHAO
 - Covering letter (EMAIL) - POINT_OF_CONTACT QIQI ZHAO - (Main Applicant)
 - Request for Health Examinations - BCC2021 463537 - 1010643378 - ZHAO, MO
 - Covering letter (EMAIL) - POINT_OF_CONTACT MO ZHAO - (Main Applicant)
 - IMMI Bridging Visa Grant Notification BCC2021 463537 - 1010643378 - ZHAO, DIANJIE
 - Covering letter (EMAIL) - RECIPIENT DIANJIE ZHAO - (Main Applicant)
 - Other (specify)-System Generated PDF File-EGOQVO1Q57_application
 - ZHAO, QIQI, 22AUG2008-Birth Certificate
 - ZHAO, DIANJIE, 05DEC1981-Australian Federal Police Clearance
 - ZHAO, DIANJIE, 05DEC1981-Overseas Police Clearance
 - ZHAO, MO, 17JUN2015-Birth Certificate
 - ZHAO, QIQI, 22AUG2008-Family Book Household Booklet Family Composition
 - FENG, MAOLING, 08OCT1988-Overseas Police Clearance
 - ZHAO, DIANJIE, 05DEC1981-Letter of offer Zhao D
 - ZHAO, DIANJIE, 05DEC1981-International English Language Testing System (IELTS)
 - ZHAO, MO, 17JUN2015-Family Book Household Booklet Family Composition Evidence

- ZHAO, DIANJIE, 05DEC1981-Payment Summary18-20
- FENG, MAOLING, 08OCT1988-Marriage Certificate
- ZHAO, MO, 17JUN2015-Passport
- ZHAO, QIQI, 22AUG2008-Passport
- ZHAO, DIANJIE, 05DEC1981-Single Week Payment
- FENG, MAOLING, 08OCT1988-Passport
- ZHAO, DIANJIE, 05DEC1981-Passport
- ZHAO, DIANJIE, 05DEC1981-Skills Assessment
- IMMI s57 Natural Justice - BCC2021 463537 - 1010643378 - ZHAO, DIANJIE
- Covering letter (EMAIL) - RECIPIENT DIANJIE ZHAO
- ZHAO, DIANJIE, 05DEC1981-apply for extension
- ZHAO, DIANJIE, 05DEC1981-comment-dianjiezhaos
- Extension request - BCC2021 463537 - 1010643378 - ZHAO, DIANJIE
- IMMI Refusal Notification with Decision Record
- Covering letter (EMAIL) - RECIPIENT DIANJIE ZHAO
- [NDC SENSITIVE] ICSE Notes - Dianjie Zhao
- [NDC SENSITIVE] COI - Dianjie Zhao
- [NDC SENSITIVE] Referral Outcome - Dianjie Zhao
- [NDC CERTIFICATE] - Dianjie Zhao

14. The Tribunal has read and carefully considered the following evidence presented to the Administrative Appeals Tribunal (AAT) prior to the hearing.

- Personal statement of Dianjie Zhao dated 12 July 2023
- Employment confirmation letter by Jo McMahon of Australian Lamb Company / Minvera Foods dated 11 July 2023
- Letter by Jake Copeland (co-worker) dated 11 July 2023
- Letter by Naomi Lettieri of Anam Cara House Colac dated 20 June 2023
- Letter by Diande Qu of Anam Cara Colac dated 29 June 2023
- Statement by Xinhua Shao of Inner Mongolia Bayan Nur Zhenghong Salughter and Fabrication Co. Ltd dated 5 August 2021 (translation and original)
- Statement by Fangchun Wang of Linyi Feilai Decoration Engineering Co. Ltd dated 12 July 2023 (translation and original)
- Statement by Tingting Chen, Principal of Beilei Beiguan Kindergarten (translation and original)
- Newspaper articles regarding applicant from Colac Herald newspaper
- Photographs of applicant undertaking volunteer work

- Red Meat Advisory Council 2022-2023 Pre-Budget Submission dated January 2022
- The Guardian 'Australian beef exports slumped to 19-year low in 2022 after wild weather and labour shortages', 12 January 2023
- Skills Impact, Australian Meat Processing Industry Skills Report
- The Ipswich Tribune 'Labour shortage makes processing ends hard to meat', 9 February 2023
- Country Caller, 'Meat conference to focus on 10, 000 worker shortage', 14 March 2022
- Beef Central 'Processing labour crisis threatens to deepen, as 'first-round' Pacific workers head home', 6 June 2022
- Beef Central 'Weekly kill: Labour shaping as key limiting factor in 2023 processing operations', 24 January 2023
- National Skills Commission, 2022 Skills Priority List – Key Findings Report, 6 October 2022
- Letter by MP Mr Dan Tehan dated 18 July 2023
- Support letter from Repair Café Colac Otway dated 19 July 2022
- Letter from State MP Mr Richard Riordan dated 21 July 2023

Has the applicant given, or caused to be given a bogus document, or information that is false or misleading in material particular?

15. The term 'information that is false or misleading in a material particular' is defined in PIC 4020(5) and the term 'bogus document' is defined in s 5(1) of the Act (see the attachment to this decision). In contrast to the definition of 'information that is false or misleading in a material particular' in PIC 4020(5), the reference in the definition of bogus document to a document that was obtained because of a 'false or misleading' statement has no requirement that it be relevant to a criterion for the grant of the visa: *Arora v MIBP* [2016] FCAFC 35; *Batra v MIAC* [2013] FCA 274.
16. The requirement in PIC 4020(1) not to provide a bogus document, or false or misleading information, applies whether or not the Minister became aware of the bogus document or information that is false or misleading in a material particular because of information given by the applicant: PIC 4020(3). It also applies whether or not the document or information was provided by the applicant knowingly or unwittingly.
17. While PIC 4020 refers to information that is false, in the sense of purposely untrue, it is not necessary for the Minister (or the Tribunal on review) to conclude that the applicant was aware the information was purposely untrue in order for PIC 4020 to be engaged. However, an element of fraud or deception by some person is necessary to attract the operation of the provision: *Trivedi v MIBP* [2014] FCAFC 42.
18. The applicant had provided information, in support of the subclass 457 visa application dated 5 March 2017 which was granted by the Department on 6 April 2017 and the applicant held this visa in the 12 months before the current application was made. Information provided

included a Certificate of Work dated 08/02/2017 (CLD2017/7736580 – Work Reference – ZHAO Dianjie.pdf). This document refers to the applicant's employment at a business located in China named Bayannur Zhenghong Slaughter Processing Co Ltd, from May 2010 in the position of slaughterer.

19. The delegate claimed that as a result of routine checks of the applicant's work experience for the purposes of assessing the current application, the Department received information which indicates that information contained in the above-mentioned work reference may be false or misleading in relation the applicant's skills.
20. A Departmental officer contacted the company on 5 July 2021 on the telephone number 13327086985 which is claimed to be obtained from the Aiqicha website. A male person claiming to be Mr Zhao Xinhua answered the phone call. The forementioned website shows that the company's main personnel are Legal Representative, Shareholder, Executive Director, Manager Mr Zhao Xinhua and Shareholder and Supervisor Mr Wen Cuilan.
21. The delegate stated the following in their decision dated 23 November 2021. *'Mr Zhao stated that the applicant used to work in their company as a Slaughterer and his main duties was slaughtering. Mr Zhao however confirmed that he did not provide the work reference to the applicant, he confirmed again at the end of the interview that he did not provide the work reference to the applicant nor sign a work reference for the applicant.'*
22. *Mr Zhao confirmed that the duration of employment of the applicant was 1 year and several months, including the training session provided by the company for several months. This is inconsistent with the information provided in the claimed work reference that the applicant started working from May 2010 to present and the work reference was issued on 08/02/2017, which means the applicant would have worked with the business for more than 6 years.'*....
23. The delegate subsequently concluded that the applicant has given a bogus document, and/or information that is false or misleading in a material particular in relation to a visa that the applicant held in the period of 12 months before the application was made. Therefore, they were not satisfied that the applicant meets the requirements of PIC 4020(1)(b).
24. PIC 4020(4) gives the delegate discretion to waive the requirements of PIC 4020(1)(b). Having considered whether there are compelling circumstances affecting the interests of Australia, or compassionate or compelling circumstances affecting the interests of an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen, that justify the grant of the visa, the delegate, on behalf of the Minister, concluded in the negative.
25. The applicant was invited on 3 August 2021 to comment under section 57 as to the delegate's preliminary view that false evidence was provided in his 457-visa application and was thus failing to satisfy the requirements of PIC 4020(1). He was in addition asked to identify compelling circumstances affecting the interests of Australia, or compassionate or compelling circumstances affecting the interests of an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen, that would justify the granting of the visa.
26. On 24 August 2021, the applicant uploaded the following documents to the relevant ImmiAccount and requested an extension of time to respond to the natural justice letter, which was later denied on 23 November 2021:
 - Letter from the applicant dated 29/08/2021
 - Letter from Naomi Lettieri (Community Liaison Nurse from Anam Cara House Colac)

- Statement (with English translation) from Xinhua Zhao
- Resident identity card of the applicant with English translation
- Train tickets with English translation
- Photos

27. The delegate concluded the following, having decided that little weight should be given to Mr Xinhua Zhao's statement nor any of the other evidence presented, as they were not accompanied by any other evidence that the applicant was employed by Bayannur Zhenghong Slaughter Processing Co Ltd in the claimed period.

28. *'..... I have considered all the evidence and information currently before me, I am not satisfied that the evidence and information alleviate the concerns surrounding the legitimacy of the applicant's claimed employment experience for the subclass 457 visa application.'*

29. The Tribunal has carefully considered both the written response of the visa applicant and the response from Mr Xinhua Zhao. It has concluded that it is equally valid to assess the responses in a positive manner as was the delegate's decision to assess them in the negative.

30. The applicant has presented a cogent argument as to why the legal representative of the factory considering the fact the applicant was a grass roots employee, who had left the organisation more than 4 years prior, would be unable or indeed may choose to not answer the questions without notice, of an unidentifiable individual purporting to be an Australian Embassy official on the end of a telephone. The Tribunal notes the conditions which would not have allowed verification of the bona fide nature of the enquiry. This was explored during the hearing.

31. The Tribunal acknowledges as probable the claim made by the visa applicant that China is experiencing a high frequency of scamming phone calls attempting to commit criminal fraud by obtaining personal information. This corresponds with the information already known verified by the Tribunal. The Tribunal notes this is the same escalating scenario being experienced in Australia at the current time. His claim that Mr Zhao answered randomly answered in order to end the call is also plausible.

32. The Tribunal notes the following statement made by Mr Zhao Xinhua, the legal representative and General Manager of Inner Mongolia Bayan Nur Zhenghong Slaughter and Fabrication Co. Ltd.

33.

'I am Xinhua Zhao, the legal representative and general manager of Inner Mongolia Bayan Nur Zhenghong Slaughter and Fabrication Co., Ltd. I hereby explain the issues about the call investigation from Australian Embassy, China.

I answered a call with an unfamiliar number in an abnormal form in early July, which asked me about several former employees, including Dianjie Zhao, of our company.

First of all, out of my vigilance somehow and busyness, when I answered the phone call, I did not verify the situation.

Secondly, the employment certificate of an employee is not a very important document to my company, and I did not have time and energy to check the details when I signed it.

Upon verification, this is to certify that Dianjie Zhao (Male, ID Card No.: 371322198112058318, Residential Address: No.106, Shangzhuang 2nd Village, Tancheng County, Linyi City, Shandong Province) has worked full time in our company from May 2010 to February 2017, carrying out the meat processing.

Bayan Nur Zhenghong Slaughter and Fabrication Co., Ltd. (sealed)

Signature: Xinhua Zhao (handwritten)

August 5, 2021'

34. The Tribunal notes that it is not uncommon to obfuscate rather than reveal information that might be considered personal or sensitive, particularly in relation to the Chinese authorities if information has not been agreed as suitable for release to a third party. Culturally it is considered more polite than not complying. This may well have been the case in relation to the unverifiable telephone call under discussion. The Tribunal notes that there were several employees about whom enquiries were made at the time. This is a scenario that might be employed in order to undertake nefarious activities or commit identity fraud.
35. The Tribunal notes that as it was someone purporting to be an Australian official, who could not be verified, was calling unannounced, at a time when Australia and Chinese diplomatic relations were at a very low point, it is unsurprising that cooperation is likely to be scant. Unofficial verbal enquiries, not previously sanctioned by the relevant Chinese Government/ Party authorities could reasonably be anticipated to be dealt with very cautiously and possibly somewhat dismissively.
36. The Tribunal has reflected upon its own experiences in relation to ex-employees some substantial time after they ceased their working relationships. It has formed the view that it would be unable to provide information any more detailed than that provided by Mr Zhao Xinhua in his circumstances, if faced with similar circumstances. It is satisfied that the information provided by Mr Zhao Xinhua is relevant and as accurate as could reasonably be expected, based upon the manner which the Australian Government official chose to progress the matter. In fact, highly detailed information, had it been given out could raise some potential questions of authenticity, as a senior official is unlikely to know about the work history of a low-level employee working on the slaughter-house floor 4 years after they left his employ.
37. The Tribunal has determined that the time-period, which was beyond 4 years after the visa applicant left the employ of his previous employer, is so substantial that it is unreasonable to expect the management of that company to respond with any degree of accuracy or interest. It is not challenging to observe that such enquiries could be interpreted as unreasonable in their expectation of accuracy and seen as an intrusion upon the working day of the manager, as they were being interrogated by an unknown source, undertaken without the courtesy of prearrangement or an appropriate identification methodology. At best this behaviour might be seen as a clumsy discourteous action leading towards arrogance.
38. The Tribunal has been supplied with 3 years of PAYG Payment Summaries for FY 2018, FY 2019 and FY 2020 pertaining to the visa applicant. The delegate was also provided with these documents but has not referred to them in a meaningful way in their decision. The 3 documents indicate an average annual salary exceeding AUD \$70,000. In other words, the applicant was employed from his commencement with the Australian employer as though he was a fully qualified and experienced worker in a fast paced and highly skilled field. The Tribunal has ascertained the visa applicant was paid greater than AUD \$80,000 in FY 2023.

The Tribunal has rarely found an employer who willingly pays for a skill level they are not receiving. This is a strong indication that the visa applicant was fully qualified and experienced at a level stated by Mr Zhao Xinhua in his explanation to the Department, where he states the applicant had more than 6 years of practical experience gained on the factory floor according to company records.

39. This level of skill, which is later verified and acknowledged by the assessment made in January 2021 as equivalent to an AQF Level III National Certificate in Meat Processing (Slaughtering), takes multiple years of experience to achieve. The assessment is both complex and very comprehensive, the results indicate a substantial skill level. The Tribunal again notes this information was provided to the delegate prior to the negative visa assessment and subsequent decision and was not referred to in their decision. The Tribunal is aware of the pay rates provided to a less skilled worker in this industry and in addition canvassed relative pay rates with the applicant during the hearing. These rates are well below the starting salary received by the visa applicant.
40. The Tribunal notes the letter of achievement provided by MINTRAC Skilled Worker Assessor dated 27 January 2021. In that letter the assessor indicates a skill level achieved in the assessment of AQF AMP30516, Certificate III in Meat Processing (Slaughtering). The Tribunal accepts as fact the statements detailing the superior skill levels possessed by the visa applicant and notes they operate at the highest skill level, (level 5), hence the high level of remuneration. This information supports the known substantial remuneration level determination for the visa applicant and was provided by the People and Culture Manager.
41. In addition, the Tribunal accepts the following statement made by the fore mentioned Manager in their letter dated 11 July 2023, in which they state the following.
 42. *‘..... ALC is a Meat Processing plant in regional Victoria that has struggled to meet its manning numbers, especially since COVID. The need to retain skilled workers like Dianjie is crucial to ALC meeting their supplier contracts.’*
43. The Tribunal is fully cognisant of the recruitment and retention crisis facing this industry. The Tribunal having interrogated a widely known and utilised national/international recruitment website, accepts it is clearly demonstrated that in excess of 4,000 jobs in this field are currently under active recruitment nationally. It is not logical that in an industry where skilled labour has been in short supply for many years, that substandard unskilled labour would be employed at a high cost, as this would not assist productivity on return on investment. As previously stated, it takes many years to reach the top level of the competency pyramid, at the highest remuneration level in this role. This can-not have been achieved if the visa applicant had such limited initial skill and experience prior to moving to Australia, as was assumed by the delegate.
44. The Tribunal again notes the multiple letters of support from co-workers, community service organisations and both the local Federal member of the Australian Parliament and The State Member of Parliament. It is evident that the applicant has established an integrated life within his community and is respected for his input and support of those in a less fortunate circumstance.
45. The Tribunal acknowledges the various reports and media articles provided by the applicant which have further informed the Tribunal as to the current state of the industry and its associated recruitment and retention issues.
46. The Tribunal is satisfied that there is not sufficient evidence to conclude that the applicant has given, or caused to be given a bogus document, or information that is false or

misleading in a 'material particular'. In fact, it has concluded there is a substantial body of evidence which supports the opposing view.

47. Therefore, the applicant meets PIC 4020(1).

Has a visa previously been refused on the basis of a failure to satisfy PIC 4020(1)?

48. PIC 4020(2) requires the Tribunal to be satisfied that the applicant and each member of the family unit have not been refused a visa because of a failure to satisfy PIC 4020(1) in the period commencing 3 years before the application was made and ending when the visa is granted or refused. This requirement does not apply to a person who was under 18 at the time the application for the refused visa was made: PIC 4020(2AA).
49. The Tribunal has no evidence before it that the applicant or any member of the family unit (as defined in reg 1.12) have been refused a visa in the relevant period because of a failure to satisfy PIC 4020(1)
50. Therefore, PIC 4020(2) is met.

Has the applicant satisfied the identity requirements?

51. PIC 4020(2A) requires an applicant satisfy the Tribunal as to his or her identity.
52. In Australia, the National Identity Proofing Guidelines, established by the Attorney-General's Department, defines identity as "... some combination of characteristics or attributes that allow a person to be uniquely distinguished from others within a specific context". The Department of Home Affairs (the Department) relies on a system that establishes a migrant's identity by exploring the 'three pillars of identity', regardless of whether they are applying for protection or more regular migration pathways. The three pillars are: biometrics (physical attributes); documentation; and narrative. The narrative pillar comprises both objective data points such as nationality and ethnicity and subjective material including family composition, schooling, employment and training, or travel history.
53. The Tribunal having reviewed the visa applicants Passport photographs and details in conjunction with the verified relevant life and work history, has concluded that the identity of the visa applicants is as asserted by them. The Tribunal does not have any evidence before it to demonstrate a different conclusion is warranted.
54. Therefore, the applicant meets PIC 4020(2A).

Has a visa previously been refused on the basis of a failure to satisfy PIC 4020(2A)?

55. PIC 4020(2B) requires that neither the applicant nor any family unit member have been refused a visa because of a failure to satisfy the identity requirements in PIC 4020(2A) during the period starting 10 years before the application was made and ending when the visa is granted or refused. This requirement does not apply to a person who was under 18 at the time the application for the refused visa was made: PIC 4020(2BA).
56. There is no evidence before the Tribunal that the applicant nor any family unit member have been refused a visa because of a failure to satisfy the identity requirements in PIC 4020(2A) during the period starting 10 years before the application was made and ending when the visa is granted or refused. Therefore PIC 4020(2B) is met.
57. On the basis of the above, the applicant does satisfy PIC 4020 for the purposes of cl 186.213(1) and subsequently cl.186.213.

DECISION

58. The Tribunal remits the application for an Employer Nomination (Permanent) visa for reconsideration, with the direction that the applicant meets the following criteria for a Subclass 186 - Employer Nomination Scheme visa:

- Public Interest Criterion 4020 for the purposes of cl 186.213(1) and subsequently cl 186.213 of Schedule 2 to the Regulations

Peter Emmerton
Member

ATTACHMENT

Migration Regulations 1994

Schedule 4

- 4020 (1) There is no evidence before the Minister that the applicant has given, or caused to be given, to the Minister, an officer, the Tribunal during the review of a Part 5 reviewable decision, a relevant assessing authority or a Medical Officer of the Commonwealth, a bogus document or information that is false or misleading in a material particular in relation to:
- (a) the application for the visa; or
 - (b) a visa that the applicant held in the period of 12 months before the application was made.
- (2) The Minister is satisfied that during the period:
- (a) starting 3 years before the application was made; and
 - (b) ending when the Minister makes a decision to grant or refuse to grant the visa;
- the applicant and each member of the family unit of the applicant has not been refused a visa because of a failure to satisfy the criteria in subclause (1).
- (2AA) However, subclause (2) does not apply to the applicant if, at the time the application for the refused visa was made, the applicant was under 18.
- (2A) The applicant satisfies the Minister as to the applicant's identity.
- (2B) The Minister is satisfied that during the period:
- (a) starting 10 years before the application was made; and
 - (b) ending when the Minister makes a decision to grant or refuse to grant the visa;
- neither the applicant, nor any member of the family unit of the applicant, has been refused a visa because of a failure to satisfy the criteria in subclause (2A).
- (2BA) However, subclause (2B) does not apply to the applicant if, at the time the application for the refused visa was made, the applicant was under 18.
- (3) To avoid doubt, subclauses (1) and (2) apply whether or not the Minister became aware of the bogus document or information that is false or misleading in a material particular because of information given by the applicant.
- (4) The Minister may waive the requirements of any or all of paragraphs (1)(a) or (b) and subclause (2) if satisfied that:
- (a) compelling circumstances that affect the interests of Australia; or
 - (b) compassionate or compelling circumstances that affect the interests of an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen;
- justify the granting of the visa.
- (5) In this clause:
- information that is *false or misleading in a material particular* means information that is:
- (a) false or misleading at the time it is given; and

- (b) relevant to any of the criteria the Minister may consider when making a decision on an application, whether or not the decision is made because of that information.

...

Migration Act 1958

s 5 Interpretation

(1) In this Act, unless contrary intention appears:

...

bogus document, in relation to a person, means a document that the Minister reasonably suspects is a document that:

- (a) purports to have been, but was not, issued in respect of the person; or
- (b) is counterfeit or has been altered by a person who does not have authority to do so; or
- (c) was obtained because of a false or misleading statement, whether or not made knowingly.

...